



## Globalization and the Human Rights Approach to Development

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# 15 | Globalization and the Human Rights Approach to Development

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This chapter examines the implications of the current wave of globalization for the pursuit of a human rights approach to development. It is now widely recognized that broad-based development is not possible without empowering the people — especially the poor. The human rights approach to development is essentially about such empowerment. The notion that individuals have rights, which they can claim, and that there are some actors who are obliged to meet those claims, is an immensely empowering one. Once policy-making is required to conform to the human rights framework, the rationale of development policies changes in a fundamental way. Policies are no longer driven merely by the recognition that people have needs that ought to be fulfilled but that they have rights that entail legal obligations on the part of the state and other relevant actors.

In this approach, the nation states bear the primary obligation for ensuring that the human rights are realized in full for everyone within their jurisdiction. The question has arisen, however, about whether the wave of globalization that is currently sweeping the world weakens or strengthens the ability as well as incentives of nation states to discharge their obligations. This question is the object of scrutiny of this chapter.<sup>1</sup>

The central argument of the chapter is that there is nothing deterministic about the impact of globalization on the ability or incentives of nation states to discharge their human rights obligations. As in all spheres, globalization entails both constraints and opportunities, and much depends on how national and international policies attempt to deal with them. The second section of the chapter scrutinizes some of the potential constraints, and the third section examines potential opportunities. The fourth section lays out some principles that national policy-making ought to follow in order to render globalization not only compatible with the human rights approach to development but also conducive to it.<sup>2</sup>

## **Some Potential Constraints to the Human Rights Approach to Development in the Age of Globalization**

In both popular and academic discussions, globalization is thought to pose a number of constraints to the fuller realization of human rights — so much so, in the opinion of some, that globalization is not deemed to be compatible with

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<sup>1</sup> The definition of globalization can be quite elastic, going beyond economic integration of the world to encompass political and cultural integration as well. This chapter focuses only on the economic dimension of globalization and its implications for the human rights approach to development.

<sup>2</sup> It is recognized that national-level policy-making must be supplemented by policies at the international level in order to be fully effective, but limitation of space prevents an examination of the international dimension of the human rights approach to development in this chapter.

human rights at all. This concern with a potential conflict between globalization and human rights is scrutinized below in the context of three sets of issues. These are (1) how the force of competition engendered by globalization might affect workers' rights, (2) how the drive towards liberalization of trade and capital flows might undermine the fiscal powers of nation states to discharge their human rights obligations, and (3) how changes in the structure of production and employment induced by globalization might threaten the rights of the poorer and weaker segments of the society.

### ***Globalization and Labor Standards: A "Race to the Bottom"?***

One area where globalization is sometimes seen to be incompatible with, or even inimical to, human rights is that of labor standards. The working class has come a long way since the early days of the industrial revolution to secure various rights through a long process of political struggle. The world community has come to accept, at least in principle, that workers have certain fundamental human rights that must guide their relationship with employers and governments. The International Labor Organization (ILO) has defined them as core "labor standards," which include (1) prohibition of forced labor, (2) freedom of association, (3) the right to organize and bargain collectively, (4) elimination of the exploitation of child labor, and (5) non-discrimination in employment. There are other standards — related to wages, health and safety conditions, rules of dismissal, among others — that are not treated as core but are nevertheless considered important enough to be part of the conditions for "decent work." The struggle to achieve these rights is still incomplete — some of these rights have been achieved less than others and workers in some countries have achieved them less than in others. Globalization is seen by many to be an enemy of this struggle. It is feared that globalization will not only stand in the way of fuller achievement of workers' rights but will actually cause a regression of rights by inducing governments to lower the level of labor standards.

The basis of this fear lies in the force of competition unleashed by globalization. As more and more nations begin to integrate with the world economy, they will have to compete with each other ever more fiercely in order to survive and prosper. It is feared that this intensification of competition might undermine labor standards in at least two ways. First, since higher labor standards are likely to entail higher cost of employing labor, countries wishing to compete in the world market might let their standards fall to the level of competitors with lower standards in order to keep their cost and prices competitive. Second, countries might be tempted to lower their labor standards in order to attract foreign investors who might otherwise go to countries where the standards are less stringent. Both these compulsions — remaining competitive in the world market and attracting foreign capital — might thus lead to a "race to the bottom" among countries as they engage in a process of competitive degradation of labor standards.

Although this fear has a superficial plausibility, theoretical arguments are by no means unambiguous and the empirical evidence is far from supportive.<sup>3</sup> There are a number of reasons why higher labor standards need not erode competitiveness. First, in a competitive labor market workers may have to trade off some cash rewards in order to achieve higher labor standards, in which case the overall cost of labor need not rise for the employers. Second, in order to be competitive in the world market and attractive to foreign capital, what matters is not just the cost of employing labor but the relationship between cost and productivity of labor. Even if a high level of labor standards entails higher costs, it may also help raise productivity — by boosting workers' morale, incentive, loyalty, and sheer physical ability. If the gain of productivity outweighs any rise in costs, higher labor standards will not entail any loss of competitive advantage. Third, even if higher costs are not matched by higher productivity, thereby forcing prices up, competitiveness will not be lost if consumers are willing to pay a premium for the products produced under better labor standards.

On the empirical front, too, there is no convincing evidence of any systematic relationship between competitive advantage and labor standards. In a comparative study across a large number of countries, Rodrik found no effect of labor standards on a country's competitiveness in the export market, after controlling for other factors (such as productivity and factor endowments) that have a bearing on exports.<sup>4</sup> A study of imports into the US market from 10 major developing countries found that countries with lower labor standards did not enjoy a higher share of the market and that within those developing countries the more export-oriented firms enjoyed higher or similar labor standards as compared with the less export-oriented ones.<sup>5</sup> In a similar vein, an Organization for Economic Co-operation and Development (OECD) study concluded that "there is no evidence that lower standards countries enjoy a better global export performance than higher standards' countries".<sup>6</sup> Thus, there is no reason to suspect, on the basis of existing evidence, that the drive to gain competitiveness in the world market has induced a general tendency to devalue labor standards.

The evidence on the relationship between labor standards and the direction of foreign capital flow also provides no reason to support the "race to the bottom" hypothesis. An analysis of US foreign direct investment in the 1980s found that countries with a poorer record of civil and political rights in general and workers'

3 For an overview of the theory and empirical evidence, see K. E. Maskus "Should Labour Standards be Imposed Through International Trade Policy?" Policy Research Working Paper 1817 (Washington, DC: World Bank, 1997) and R. M. Stern, "Labour Standards and International Trade," Discussion Paper no. 430. Research Seminar in International Economics. (Ann Arbor: University of Michigan, 1998).

4 D. Rodrik "Labor Standards in International Trade: Do They Matter and What Do We Do About Them?" in Robert Lawrence, Dani Rodrik, and John Whalley, *Emerging Agenda for Global Trade: High Stakes for Developing Countries*. (Washington, DC: Overseas Development Council, 1996).

5 M. Aggarwal, "International Trade, Labor Standards, and Labor Market Conditions: An Evaluation of the Linkages," Working Paper 95-06-C (Washington, DC: US International Trade Commission, 1995).

6 OECD, *Trade, Employment, and Labour Standards: A Study of Core Workers' Rights and International Trade*. (Paris: Organization for Economic Co-operation and Development, 1996), p. 12.

rights in particular actually received less investment from the US than would have been predicted by their other characteristics.<sup>7</sup> In other studies, labor standards in recipient countries were found to have no systematic relationship with the size of foreign direct investment (FDI) coming from the USA<sup>8</sup> and from the OECD countries as a whole.<sup>9</sup> In popular discussion, the link between foreign investment and labor standards has focussed mainly on the so-called export processing zones (EPZ), where labor standards, especially those relating to the right to collective bargaining, sometimes tend to be poor. There is, however, no evidence that EPZs with lower standards have in general succeeded in attracting more foreign capital than those with higher standards. On the contrary, a recent study has concluded that “Countries that pursue more integrated policy approaches for attracting export-oriented FDI — for example by encouraging tripartite representation (employers, workers and public authorities) on EPZ committees, guaranteeing workers’ rights (including freedom of association and collective bargaining), and upgrading skills and working conditions — have tended to attract higher quality FDI).”<sup>10</sup> Moreover, as a result of combined efforts of the ILO, workers’ associations and civil society organisations, labor standards seem to be improving in several EPZs over time rather than going down.<sup>11</sup>

The point of all this is not to deny that some countries may sometimes be tempted to compromise on their labor standards in the hope of stealing a march over others. Rather the point is that deliberate and competitive degradation of workers’ rights is neither an inescapable consequence nor a general tendency of countries trying to integrate with the world economy.

### ***Fiscal Autonomy of Nation States***

One of the essential features of globalization is liberalization of trade and capital flows that helps integrate an economy more closely with the global economy. Trade liberalization involves elimination or at least substantial reduction of trade barriers such as tariffs and quotas. Tariff reduction, however, has consequences not just for trade flows but also for government budgets. In most developing countries, the domestic base of revenue collection is rather skimpy, and governments tend to rely heavily on tariffs on internationally traded goods as a major and, in some cases, the most important source of budgetary revenue. Trade liberalization might, therefore, entail considerable loss of revenue for the government. Something similar may happen with the liberalization of capital flows. Governments may be tempted to reduce taxes on the income earned by foreign capital in order to induce foreign investors to come to their shores in preference to other countries. The resulting loss of revenue may seriously constrain the government’s ability to under-

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7 Rodrik, *supra*, note 4.

8 Aggarawal, *supra*, note 5.

9 OECD, *supra*, note 6.

10 UNCTAD, *World Investment Report 2002: Transnational Corporations and Export Competitiveness* (Geneva: United Nations Conference on Trade and Development, 2002), p. 244.

11 ILO, “Employment and Social Policy in Respect of Export Processing Zones (EPZs),” GB.286/ESP/3. Committee on Employment and Social Policy, Governing Body (Geneva: International Labor Organization, 2003), p. 15.

take essential expenditures that directly or indirectly help realize the human rights of the people, by ensuring better access to food, health, education, and so on.

Apart from possible loss of revenue, there is another way in which free flow of capital may constrain a government's fiscal powers. Governments in developing countries often resort to deficit financing in order to carry out expenditures that cannot be financed fully by the small amount of revenues they can manage to collect. Deficit financing, however, can lead to inflation, which in turn can lead to pressures for depreciation of the currency in the foreign exchange market. Any such pressure for depreciation is bound to be viewed with concern by foreign investors, as a depreciated currency would mean a fall in the real value of their assets and income. Foreign capital would, therefore, tend to shy away from countries whose governments have a propensity to indulge in excessive deficit financing. As a result, if a government is keen to keep foreign capital within its shores, it would be seriously constrained in taking recourse to deficit financing.

Liberalization of trade and capital flows may thus limit a government's ability to undertake desired expenditures by reducing the amount of revenue on the one hand and constraining the use of deficit financing on the other.<sup>12</sup> It is conceivable that this will impair a government's ability to undertake fiscal expenditures that are essential for better realization of human rights.

It is important, however, to recognize that the fiscal constraint is not an inevitable consequence of globalization. There are a number of reasons for avoiding excessive pessimism in this regard. The first point to note is that many aspects of fuller realization of human rights do not make any substantial demand on budgetary resources. In this context, it is useful to note a three-fold classification of State obligations that has been discussed extensively in the human rights literature — namely, the obligation to *respect*, the obligation to *protect*, and the obligation to *fulfill* human rights.

The obligation to *respect* entails that the State must not do anything that would violate the rights of people. In the civil and political sphere, this means for example that the State must not deny people their freedom of speech, or must not put them into jail without following the due process of law, and so on. In the economic sphere, it means for example that the State must not deny any individual or group access to their means of livelihood, or to health care, or to education, etc.

The obligation to *respect* is a kind of negative obligation — it specifies what the State must not do. The other two obligations are positive in nature — they specify what the States must do. The obligation to *protect* emanates from the possibility that even though the State itself may not violate the rights of anyone, some third party might try to do so. The State in that case has an obligation to protect those whose rights are being violated or being threatened by others. For example, if an oppres-

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12 See B. Khatri and M. Rao, "Fiscal Faus Pas? An Analysis of the Revenue Implications of Trade Liberalization," *World Development* 30(8), 2002, and B. Khatri, "Trade Liberalization and the Fiscal Squeeze: Implications for Public Investment," *Development and Change* 34(3), 2003, on the analytical and empirical issues regarding the impact of liberalization on revenues and expenditure of governments in the developing countries.

sive landlord is violating a tenant farmer's right to food by unlawfully evicting him from the only piece of land on which the latter's subsistence depends, then the State must protect the farmer by taking appropriate punitive actions on the landlord.

The third and final obligation — namely, the obligation to *fulfill* rights — is subdivided into two parts — to *facilitate* and to *provide*. The obligation to *facilitate* means that the State must proactively engage in activities that would strengthen people's ability to meet their own needs. For example, while it is true that every individual must be responsible for maintaining his or her own health, the State has an obligation to facilitate this process either by creating the conditions in which market can supply the healthcare demanded by the people, or, in case the market fails, by supplying it through the State machinery.

The obligation to *provide* goes one step further. It requires the State not just create the conditions in which people would be able to provide for themselves but actually transfer the necessary resources to those who for one reason or another cannot provide for themselves. Thus, the State must directly provide food whenever an individual or a group is unable, for reasons beyond their control, to provide for themselves the food they need (for example, the old and the infirm, people displaced by wars or natural disasters, and so on).

One of the distinctions among these different categories of obligations is that not all of them are equally dependent on the availability of resources. For instance, the "respect" obligations with regard to most rights would require political will more than economic resources. The "protect" and "fulfill" obligations would typically be more dependent on resources, but even there rapid progress can be made by improving the efficiency of resource use — for example, by scaling down expenditure on unproductive activities and by reducing spending on activities whose benefit goes disproportionately to the privileged groups of the society. Very often when governments plead inability to realize human rights because of resource constraint the real problem is not so much the lack of resources as such but the propensity to waste resources and to pander to powerful vested interests. If globalization can pressure delinquent governments to cut down on such wasteful use of resources by constraining their fiscal powers, that won't be such a bad thing for the cause of human rights after all.

This is not to deny that there is no genuine problem of resource constraint that stands in the way of full realization of human rights in most developing countries. Even after wasteful expenditures have been cut to the minimum, it is still possible that governments will not have enough resources at their disposal to discharge their human rights obligations fully. In that case, any curtailment of fiscal powers will have to be viewed with concern. It is, therefore, important to consider whether, and to what extent, globalization is actually likely to constrain the fiscal autonomy of developing countries.

There are a number of reasons to suspect that the fear about globalization's impact on fiscal powers may be grossly exaggerated. Consider first the effect of tariff

reduction. What typically happens in the course of trade liberalization is not a sudden drop to zero tariff across the board but a change from a regime of high and variable tariff rates to a regime of low and relatively uniform rates. The average rate of tariff invariably goes down as a result, but this does not necessarily mean that total tariff revenue must go down as well. This is because the tax base tends to expand at the same time.

First, since tariff reduction leads to greater volume of trade, total tariff revenue may increase even if the average rate goes down, depending on price elasticities of import and export. Secondly, since trade liberalization typically involves replacing quantitative restrictions on imports by tariff restriction (the so-called tariffication of quotas), many more commodities get subjected to tariff payments than before. As a result, there can be no general presumption that trade liberalization will necessarily lead to a loss of revenue. A similar argument applies to the liberalization of capital flows. Even if a government reduces the income tax rate in order to attract foreign capital, total tax revenue may still increase if the inflow of foreign capital rises enough to generate more than proportionate increase in income by employing such capital to productive use.

It is also important to note that the revenue impact of trade liberalization cannot be judged simply from the effect on tariff revenue because tariffs may be replaced by other taxes. The problem with tariff is that it is a discriminatory tax — that is, it discriminates against imports compared with domestic goods. Such discriminatory taxes distort the incentive structure and thereby induce economic inefficiency.<sup>13</sup> That is why trade liberalization, whose objective is to improve economic efficiency, requires the reduction and eventual elimination of tariffs. But this objective does not require elimination of taxes on imports altogether. It is perfectly admissible to replace tariff with a tax that is neutral between imported and domestic goods. Such a tax would continue to raise revenue from imports — as well as from domestic goods — while being perfectly consistent with the principle of trade liberalization. Total tax revenue may not thus fall, and may in fact increase, even if tariff revenue falls. Therefore, if a government is concerned about the revenue effect of trade liberalization, it has the option of imposing such a neutral tax (such as the value-added tax).

Clearly, then, the fiscal constraint impact of globalization cannot be taken for granted. Governments are not entirely helpless in this matter. They have policy options available at their disposal that may in fact enhance their fiscal powers. These options include tariffication of quotas, setting the average rate of tariff at a level that avoids serious loss of tariff revenue, replacing tariffs with neutral taxes, and generally improving the efficiency of revenue collection, which happens to be pretty low in developing countries. To what extent developing countries are actually making use of these policy instruments along with their attempt at trade liberalization is not yet known — research on this topic is still very limited. But there is

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13 Except in special cases where tariffs may be justified on the ground of externalities.



some evidence to support the argument that trade liberalization can go hand in hand with improved fiscal powers provided appropriate policy options are adopted.

The experience of Bangladesh is instructive in this regard.<sup>14</sup> Bangladesh adopted sweeping measures of trade liberalization in the late 1980s and early 1990s. Tariff revenues as a proportion of GDP have fallen slightly as a result, but total revenue from imported goods has not. This is because the government of Bangladesh partially replaced tariffs with the neutral value-added tax (VAT) in 1992, applied uniformly on domestic and imported goods. On the domestic front, the new replaced the old-style excise duties, and on the import front it (partly) replaced customs duties and sales tax on imports. In addition, the government introduced the so-called Supplementary Duty, which is also meant to be imposed equally on import and domestic production.

As a result of these tax reforms, the overall collection of indirect taxes did not actually suffer in Bangladesh following trade liberalization. As a proportion of GDP, total revenue from indirect taxes in fact increased from 4.6 percent in the late 1980s to 5.6 percent in the first half of the 1990s and further to 6.3 percent in the second half of the decade.

Increased revenue from indirect taxes has been supplemented by a move towards better collection of direct taxes that proved quite successful up to the mid-1990s (but tapered off since then). As a result, total revenue as a percentage of GDP went up from 6.3 percent in the second half of the 1980s to 9.2 percent in the second half of the 1990s. Correspondingly, public expenditure as a percentage of GDP also went up — from 12.9 percent to 13.6 percent of GDP. While this increase is quite small, it is significant that it happened despite a secular decline in the inflow of foreign aid during the same period. Finally, it is worth noting that the share of public expenditure going to sectors that benefit the poor proportionately more — such as health, education, and basic infrastructure — has also increased. For instance, the combined share of health and education in total budgetary expenditure has gone up from 14 percent in the first half of the 1980s to 23 percent in the second half of the 1990s. While the evidence from a single country is by no means conclusive, this is enough to make the point that there is nothing inevitable about globalization making it harder for governments to discharge their human rights obligations by constraining their fiscal powers. Much depends on the details of the policy package that is implemented in the course of liberalization.

### ***Winners and Losers from Structural Change***

Integration with the global economy inevitably brings about structural changes within an economy, opening up new opportunities for enhancing employment and income but also closing down, or at least diminishing, many existing means of livelihood. To use economic jargon, opportunities open up in those activities in which a country has comparative advantage, and diminish in those in which it has

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14 S. R. Osmani, W. Mahmud, B. Sen, H. Dagdeviren, and A. Seth, *The Macroeconomics of Poverty Reduction: The Case Study of Bangladesh* (Dhaka: UNDP, 2003).

comparative disadvantage. All this may have profound implications for pursuing the human rights approach to development.

Economic theory suggests that generally speaking gains will outweigh losses, so that a nation as a whole should gain in the form of an overall increase in welfare. The problem, however, is that gains and losses may not be distributed evenly across the population. Much depends on who happens to be engaged in the expanding activities and who in the contracting ones, and who has the skills and other means of access to the new opportunities that are being opened up. Evidence as well as common sense suggests that losses will generally be felt disproportionately more by the weaker segments of the society. They would suffer more simply because they lack the flexibility to cope with the changing winds of market forces owing to the various impediments they face in accessing new skills and resources. There is a real danger that some of them might face a reversal in the achievement of a range of human rights such as the rights to food, work, health, and shelter. This is one reason for concern regarding the compatibility of globalization with human rights.

While recognizing that globalization has the potential to make some of the poor more vulnerable in the face of changing structure of opportunities, it is necessary, however, to avoid excessive alarmism in this regard. A couple of points are worth noting here.

First, it is often suggested almost in an axiomatic fashion that globalization has widened income inequality in the world, which is seen as *prima facie* evidence for the view that the poor have been hurt by the process. However, quite apart from the fact that widening inequality can easily go in hand with absolute improvement in the living conditions of the poor, the very notion that globalization has widened inequality is deeply problematic. The empirical evidence on what has happened to income distribution in the world in the current phase of globalization is inconclusive.<sup>15,16</sup> More importantly, no one has yet found a satisfactory way of separating out the effect of globalization from the effects of other factors that might have a bearing on income distribution in the world.

In any case, even if it can be shown that globalization has indeed contributed to widening of inequality in the world, it does not follow that globalization must necessarily do so. In the 1950s and 1960s, it used to be believed that when a backward economy begins to develop along the capitalist line income distribution necessarily worsens at the initial stage, before improving much later. Known as the Kuznets hypothesis, this belief has now come to be belied by empirical evidence. What happens to income distribution at any stage of development depends very much on the nature of policies pursued by governments. With appropriate policies, distribution can actually improve as an economy grows — there is nothing inevitable about the Kuznets hypothesis. The same is true in principle about the effect of globalization. Policies — at both national and international level — can make a difference. As will be argued below, this is precisely the reason for taking the

15 B. Milanovich, "Can We Discern the Effect of Globalization on Income Distribution? Evidence from Household Surveys," Policy Research Working Paper 2876 (Washington, DC: World Bank, 2002).

16 M. Ravallion, "Debates on Globalization, Inequality and Poverty: Why Measurement Matters," Policy Research Working Paper 3038 (Washington, DC: World Bank, 2003).

human rights approach to development even more seriously in the age of globalization.

The second point to bear in mind is that even without globalization structural changes do occur in any economy except in the most moribund ones. Owing to changes in technology, tastes, demographic structure, and so on, new opportunities open up in the sphere of production and old ones close down all the time. The effects of these home-grown structural changes are not qualitatively dissimilar to those induced by globalization. They too create new uncertainties and vulnerabilities along with new opportunities, and in this case too the cost of negative effects tends to fall disproportionately more on the weaker segments of the population, and for much the same reasons. If this is not seen as a reason for avoiding structural changes in general, it should not be seen as a reason for shutting the door to globalization either.

There is, however, a very good reason for being especially concerned with the possible negative effects of globalization and for trying to do something about it. The problem is that unlike home-grown structural changes, which typically unfold incrementally over a long haul allowing a breathing space for necessary adjustments, the current phase of globalization is bringing about sweeping structural changes within a short period of time. The sheer pace of change can entail serious problems of adjustment, especially when it comes to setting up an adequate social protection scheme for those suffering most from the disruptions caused by structural changes. What is worse, this problem can be compounded by two other factors.

One of these can be described as the problem of shifting comparative advantage. As noted earlier, when a country integrates with the world economy, the structure of production begins to shift away from activities with comparative disadvantage towards those with comparative advantage. The problem, however, is that structural changes caused by this shift may not be a once-for-all affair because the nature of comparative advantage may itself undergo rapid change during the process of globalization. Comparative advantage, it must be remembered, is inherently comparative in nature – that is, it depends not just on the characteristics of a particular country but also on those of other countries that participate in a trading network. As a result, any country that has already embraced globalization may find that its comparative advantage keeps changing as the net of globalization spreads, bringing in new countries within the trading network. Thus, countries such as Malaysia and Taiwan have discovered to their dismay that the comparative advantage they have enjoyed in labor-intensive garment industries for a number of years was suddenly eroded as Bangladesh, Sri Lanka, and Vietnam enter the export market with even cheaper labor. Similarly, the Latin American countries that once found comparative advantage in labor-intensive activities when they first embraced globalization now find that they no longer have comparative advantage in those activities as populous countries such as China and India have entered the scene. In each case, a country that loses comparative advantage in one sphere will eventually find it elsewhere. But the problem is that shifting comparative advantage of this kind can keep the structure of an econ-

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17 In theory, the economic structure will eventually settle down to some kind of steady state as the net of globalization engulfs the whole world, but that could take a very long time indeed.

omy in a constant state of flux for a prolonged period of time.<sup>17</sup> The disruptive effects of globalization may, therefore, be quite serious.

The other problem stems from the erratic behavior of international finance. One of the presumed gains from globalization is that free flow of capital will ensure efficient use of resources by moving finance from regions with low marginal rate of return to regions with higher returns. In reality, however, capital does not always behave in such efficient manner because of various kinds of market failures arising from imperfect and asymmetric knowledge that is inherent in capital markets. In the absence of perfect knowledge, flow of capital in and out of countries is often guided by “herd behavior,” as an initial move by some investor is blindly imitated by hordes of others. The magnitudes of capital movement can thus be quite out of proportions with the underlying rates of return. In that case, what should have been an orderly and limited movement of capital becomes a stampede, plunging a country into a crisis that is deeper than what it probably deserved in terms of its economic fundamentals. Even the direction of flow can sometimes be erratic, for example, when the “contagion effect” takes hold — that is, when capital moves out of a country not necessarily because anything is fundamentally wrong with it but because some other country of similar type is experiencing a crisis. The series of financial crises that rocked Asia and Latin America in the past decade and a half bear clear hallmarks of such erratic behavior of international finance.

This is not to suggest that the countries that experienced crises did not get many of their economic policies seriously wrong or that they didn’t need to bring about fundamental structural changes in their economies in order to make them more efficient. They generally did, but it is also undeniable that the erratic movement of international finance forced some additional structural changes that were not needed on efficiency grounds and were probably quite harmful (for example, when drying up of capital forced even potentially efficient activities to be closed down).<sup>18</sup> Many of these uncalled for changes were probably reversed as the countries emerged out of crises and international finance resumed business as usual. But the harm done during the crisis in terms of unnecessary human sufferings caused by disruptions and dislocations, not all of which were efficiency enhancing, was real and extremely painful.

Globalization can thus have both an accentuating and a distorting effect on structural changes, even though some of these changes would in any case occur in an economy even without it. The potential for creating new uncertainties and vulnerabilities (along with new opportunities) is, therefore, correspondingly greater in the context of globalization than without. As such, the potential for hurting the

18 The problem was compounded by policy errors made by the Bretton Woods institutions. For a searching analysis of these issues, see J. E. Stiglitz, *Globalization and Its Discontents* (London: Allen Lane, 2002).

19 The empirical evidence on the uneven impact of globalization on the poor is discussed by P. R. Ageron, “Does Globalization Hurt the Poor?” Policy Research Working Paper 2922 (Washington, DC: World Bank, 2002) and M. Ravallion, “Looking Beyond Averages in the Trade and Poverty Debate,” Policy Research Working Paper 3461 (Washington, DC: World Bank, 2004).

weaker segments of the population is also greater in the age of globalization, unless conscious efforts are made to protect them.<sup>19</sup>

This is where the human rights approach to development can play a vitally important role. The international human rights normative framework has a particular pre-occupation with individuals and groups that are vulnerable, marginal, disadvantaged, or socially excluded. That is why it can act as an effective counterweight to the disruptive effects of globalization whose burden is likely to fall disproportionately on these very categories of people. Two elements of the international human rights normative framework are especially relevant here. These are the twin principles of non-discrimination and equality and the principle of non-retrogression of rights.

The principles of non-discrimination and equality are among the most fundamental elements of international human rights law. These are elaborated in numerous human rights instruments, including the Universal Declaration of Human Rights, the two International Covenants on civil-political rights and economic-social-cultural rights, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child. Recognizing the fundamental importance of these twin principles, the international community has established two treaty bodies, under ICERD and CEDAW, that are devoted exclusively to the promotion and protection of non-discrimination and equality.

If left unattended, the uneven burden of adjustments to globalization can fall foul of the principles of non-discrimination and equality. The problem is not just that globalization will not have a neutral or uniform effect on everyone in the society — no policy or economic change can be expected to have such an ideal effect. The problem arises when there is a systematic bias against some groups or individuals. If the adverse effects of a policy or economic change were to be distributed randomly among the population, the question of discrimination would not arise. But this is unlikely to be the case. Since the brunt of the burden is likely to be borne by the weaker segments of the population, the possibility of discrimination is very real. Two considerations are important to bear in mind in this context.

First, it needs to be recognized that discrimination and inequality may take many different forms and stem from many different sources. They may arise from explicit legal inequalities in status and entitlements. But they can also arise from policies that disregard the needs of particular people, or from social values that shape relationships within households and communities in a manner that discriminates against particular groups of people. Second, it is important to look at the effects of policies, not just intentions. For example, if the effect of a policy regime is to impoverish disproportionately women, or indigenous peoples, or some other marginalized group, it is *prima facie* discriminatory, even if the policy-makers had no intention of discriminating against the group in question.

Adherence to the human rights approach to development will, therefore, re-

quire that those who are systematically hurt by the disruptions caused by globalization be accorded special attention. In particular, efforts will have to be made to equip them with the skills and resources necessary to take advantage of the new opportunities being opened up by structural changes and to remove the impediments they face in getting access to productive employment so that their loss from adjustments can be minimised and the scope for gaining from new opportunities maximized.

The principle of non-retrogression of rights can also play a vitally protective role for the vulnerable people. This principle states that nobody should be allowed to suffer an absolute decline in the enjoyment of any right at any time. The human rights approach to development acknowledges that full enjoyment of all the rights may only be possible over a period of time, and that as time passes some rights may be advanced faster than others.<sup>20</sup> But it does not permit the level of enjoyment of any right to decline in comparison with the past. Globalization can clearly lead to a violation of this principle if the rapid and overlapping structural changes it brings about lead to such a serious disruption that the weak and vulnerable individuals suffer an absolute decline in their living standard. Such a decline clearly occurred in a spectacular manner for a large number of people during the financial crises of the recent past. But even in normal times, many individuals and groups have suffered a decline in living standards in a manner that was perhaps less spectacular but no less real for them. The human rights approach to development demands that an adequate social protection scheme be put in place to prevent such a decline.

### **Globalization and Growth: Opportunities for the Human Rights Approach to Development**

Globalization not only entails potential constraints to the quicker realization of human rights, it also creates new opportunities — principally by helping to promote faster rate of economic growth. Just as the constraints that are only potential can be handled with appropriate policy response, the opportunity that growth creates is also potential — one that must be harnessed in the service of human rights with the support of the right kind of policies and institutions. Some of the principles that must underlie the supportive regime of policies and institutions are discussed below. At this point, we first elaborate on the links between globalization, growth, and human rights.

In much of the traditional discourse on human rights as well as a large part of the development discourse, economic growth tends to be viewed with a good deal of suspicion. This is not entirely surprising in view of the fact that many enthusiasts of economic growth tend to be so obsessed with it as to almost disregard the adverse human consequences of wrong kinds of economic growth. But one needs to distinguish between economic growth in general and wrong kinds of economic growth in particular. The kind of growth that either neglects, or, worse still, cur-

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<sup>20</sup> This is known as the principle of progressive realization of rights, which is discussed further below.

tails and violates human rights has, of course, no place in the human rights approach to development. But that does not mean that the need for economic growth can be neglected by this approach. The power of economic growth can and should be harnessed for the speedy realization of the right to development.

One could even argue that economic growth is not just compatible with the human rights approach but is an integral part of it. One of the salient features of the human rights approach to development is the recognition that the existence of resource constraint might call for progressive realization of rights over a period of time. But in order that the leeway offered by the idea of progressive realization does not induce the duty-holders to relax their efforts, the human rights approach also requires that measures be taken to fully realize all the rights “as expeditiously as possible.” Once the speed of realization of rights is accorded due importance, it is easy to see why rapid economic growth is essential for the human rights approach to development. The point is made most forcefully by Sengupta:<sup>21</sup> “It is of course possible, by reallocation and redistribution of existing resources, to improve the realization of some of the rights, separately and individually, for a limited period and to a limited extent, without economic growth . . . However, it must be recognized that all rights, including civil and political rights, involve using resources to expand the supply of the corresponding goods and services and, possibly, public expenditure. Therefore, if all or most of these rights have to be realized fully and together and in a sustainable manner, steps have to be taken to relax the resource constraint by ensuring economic growth.” In short, since realization of rights involves resources, speedy realization of rights calls for softening the resource constraint, which in turn calls for economic growth.

A related reason why growth is essential for the pursuit of a right-based approach to development is that it will ease the pain of making trade-offs among rights. The idea of trade-offs among rights sits uneasily with the notion of indivisibility of rights, which has a hallowed position in the literature on human rights. Strictly speaking, however, trade-offs need not be inconsistent with indivisibility of rights when one recognizes that there are actually two kinds of trade-offs one can think of. One kind of trade-off refers to actually reducing the level of some kind of right from the existing level in order to raise the level of some other right. This notion of trade-offs is obviously incompatible with indivisible rights.

But there is another kind of trade-off that is not only compatible with the notion of indivisibility but also unavoidable. When a government is trying to improve the levels of various rights under resource constraint, it is necessarily faced with the choice of allocating scarce resources among alternative rights. We can either spend more on the improvement of right X and less on right Y, or the other way round. But if we do decide to spend a bit more on X, we necessarily decide to spend a bit less on Y — that’s the trade-off. In this case, however, no single right needs be diminished compared to the existing situation, and yet there is a trade-off

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21 A. Sengupta, Fifth Report of the Independent Expert on the Right to Development, Report submitted to the Open Ended Working Group on the Right to Development (Geneva: Commission on Human Rights, UN Economic and Social Council, 2002).



in terms of how much improvement we can achieve in some right relative to some other. This kind of trade-off at the margin — which might be called incremental trade-off — is unavoidable in a world of scarce resources, which is the real world we live in.

Incremental trade-offs do not violate the principle of indivisibility of rights because they do not require that the level of any particular right be diminished from the existing level in order to promote another nor do they require that promotion of some right be put completely on hold while trying to advance another. Nonetheless, they do present painful choices to the policy-makers who might be keen to improve rapidly the realization of all rights at the same time but unable to do so because of resource constraint. In this situation, faster rate of growth will help ease the pain of making unavoidable trade-offs by making more resources available.

A strategy for promoting economic growth must, therefore, constitute an integral part of the human rights approach to development. Globalization can be a powerful ally in this regard because of its growth-promoting potential.<sup>22</sup>

There is, of course, no guarantee that by embracing globalization a country will automatically accelerate the rate of growth. Things can go wrong for many reasons. Some of these reasons could be external — such as collapse of the international financial system; but many could be internal — such as poor governance, civil war, deteriorating environment, and so on. Other things remaining the same, however, globalization will enhance the growth potential by bringing about a more efficient allocation of resources, by fostering competition, and by spurring technological diffusion. This potential must be harnessed for advancing the cause of human rights.

It must be realized, however, that ensuring faster growth is one thing and harnessing its potential for the cause of human rights is quite another. All that growth does is to make it easier to advance the human rights approach to development — by speeding up progressive realization of rights and by easing the pain of unavoidable trade-offs. But it does not ensure that the realization of human rights will in fact be advanced for the simple reason that the resources made available by growth may not actually be used for the purpose of promoting rights.

For growth to be an ally of human rights, any strategy of growth must be embedded in a comprehensive framework of policies and institutions that is consciously designed to convert resources into rights. The precise details of policies and institutions will, of course, vary from one situation to another, but some general principles can be derived from the normative framework laid down by the international law of human rights. The more important among these principles are elaborated below.

## The Principles of the Human Rights

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22 For a thorough analysis of the theory and evidence on the links between globalization and growth, see J. Bhagwati, *In Defense of Globalization* (Oxford: Oxford University Press, 2004).



## Approach to Development

In order to delineate the major principles of the human rights approach to development, it is first necessary to appreciate what exactly is demanded by the human rights norms — that is, what goals they set and what obligations they entail about how to go about realising those goals.

Any approach to development must be underpinned by some set of values and norms, whether explicit or not. The human rights approach to development is based on an explicit framework of norms and values — one that has been universally accepted and codified through a series of international covenants, treaties, declarations, and conventions. To begin with, this approach adopts a particular view of what constitutes development. This is best exemplified by the following formulation of the concept of the “right to development” recently adopted by the international community. “The Right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”<sup>23</sup>

This formulation clearly implies that development is to be defined broadly as “economic, social, cultural and political development,” in which “all human rights and fundamental freedoms” can be fully realized. The human rights approach thus demands broadening the concept of development from the narrowly economic one that has dominated much of the development literature in the past. The narrow concept of economic development still remains important, but it is no longer enough. Development must entail fuller realization of economic, social, and cultural rights on the one hand and civil and political rights on the other. By postulating that the pursuit of one set of rights to the neglect of others does not constitute development, this concept of development thus embraces the notion of “indivisibility of rights,” which the human rights community has long championed.<sup>24</sup>

The human rights approach not only offers a comprehensive notion of development, but it also lays out a number of principles that must guide the policies and institutions to be designed for promoting development. For convenience of exposi-

23 This is from Article 1 of the Declaration of the Right to Development, 1986.

24 This is entirely consistent with the notion of “development as freedom,” as propounded by A. Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999). Sen defined freedom broadly to encompass both negative and positive freedoms — in the sense of Berlin. See I. Berlin, “The Two Concepts of Liberty,” in his *Four Essays on Liberty*, 2nd Edition (Oxford: Clarendon Press, 1969). Since negative freedoms correspond broadly to civil and political rights and positive freedoms correspond broadly to socio-economic rights, the notion of development as freedom correspond closely to the notion that development consists in the realization of the whole range of human rights.

25 The following discussion draws heavily on S. R. Osmani, “An Essay on the Human Rights Approach to Development” in A. Sengupta (ed.) *Reflections on the Right to Development* (New Dehli: Sage Publications, 2004). In the specific context of the human rights approach to poverty reduction strategies, many of these principles are also discussed in OHCHR, *Guidelines for A Human Rights Approach to Poverty Reduction Strategies* (Geneva: Office of the High Commissioner for Human Rights, 2005): to which the present author was one of the contributors.

tion, these principles may be classified into three categories: (1) those informing the process of policy formulation, (2) those shaping the content of policies, and (3) those guiding the monitoring of policy implementation.<sup>25</sup>

### ***The Rights-Based Process of Policy Formulation***

One of the most important principles of the human rights approach to policy formulation is that it should be participatory in nature. In particular, the population groups that are affected directly or indirectly by a particular policy should be able to play an effective role in the process of formulating that policy. One may distinguish four stages of participation: preference revelation; policy choice; implementation; and monitoring, assessment and accountability.

The stage of *preference revelation* is the initial stage of any process of policy formulation. Before policies can be formulated, people must be enabled to express what their preferences are, i.e. what objectives they want to achieve. The stage of *policy choice* refers to the stage at which policies are formulated and decisions taken regarding the allocation of resources among alternative uses. As different patterns of resource allocation will serve the interests of different groups of people differently, a conflict of interest is inherent in any process of policy formulation. Traditionally, the poor and the marginalized groups lose out in this process, as they do not possess enough political or financial power to make their interests count. The human rights approach must take steps to alter this situation by creating a legal-institutional framework in which these groups can participate effectively in policy formulation.

Opportunities must be created to enable the people to exercise their right to participate in the *implementation* stage as well, even though implementation of policies is primarily the responsibility of the executive arm of the State. The final stage of participation is the stage of *monitoring and assessment* of the success or failure of policies so that the State and other duty-bearers can be held accountable for their obligations.<sup>26</sup>

For genuine participation to be possible some preconditions must be met and certain other rights must be fulfilled. The essential precondition is that the ordinary people must be empowered to claim their rights and to participate effectively in the decision-making process. The process of empowerment can itself be quite complex and time-consuming because of the deep-rooted nature of the asymmetries of power that exist in most societies.

To begin with, the character of the polity must be democratic in nature. Though by no means sufficient, democratic governance is a necessary condition for creating a space in which all groups of people can effectively participate in national decision-making processes. The second precondition is to strengthen the bargaining power of the marginalized groups so that they are able to participate effectively in potentially conflictual situations. Capacity-building activities are also essential for this purpose, and civil society can play a very constructive role in this sphere.

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26 The issue of accountability is discussed further below.

For this to be possible, the State must create the necessary legal and institutional environment in which an independent civil society can flourish. In turn, the creation of such an environment requires simultaneous efforts to promote a range of civil and political rights. These include the right to information, the right to freedom of expression, the right of association, and the right of equal access to justice. Without the fulfillment of these rights, empowerment is not possible; and without empowerment, effective participation is not possible. Therefore, taking measures to fulfill these rights is an essential component of the human rights approach to development.

### ***Principles Shaping the Contents of Policies Under the Human Rights Approach***

The contents of policies refer to the goals and targets that are set by the State, the resources that are committed for the realization of those targets, and the methods that are adopted to achieve them. It is recognized that setting targets and committing resources for them will necessarily involve setting priorities, which in turn will involve considering trade-off among alternative goals. These acts of setting priorities and accepting trade-offs must necessarily involve some value judgements. For a policy regime to be consistent with the human rights approach, these value judgements must be shaped by the human rights norms. This has several implications for the characteristics of policy contents.

First, the goals and targets set by the State must conform to those set by various human rights instruments and elaborated by the relevant treaty bodies.

Second, policies must take cognisance of people's rights to equality and non-discrimination, which are among the most fundamental tenets of international human rights law.

The third set of principles relates to the possible trade-offs among rights. The existence of resource constraint that gives rise to the idea of progressive realization of rights also makes it inevitable that policy-makers will have to face trade-offs among alternative rights — that is, some rights may have to be given priority over others — because all rights cannot be fulfilled at the same time or at the same pace. While the human rights approach recognizes the inevitability of trade-offs, it also imposes certain conditions on it.

The first condition is imposed by the principle of indivisibility of rights, which demands that no human right can be considered intrinsically inferior to any other. If a certain right is to be given priority, it can only be done on practical grounds — for example, because a certain right has remained historically more under-realized than others, or because it is likely to act as a catalyst towards the speedy fulfillment of others, and so on.

Another condition is imposed by the principle of non-retrogression of rights — the idea that no right can be deliberately allowed to suffer an absolute decline in its level of realization. This condition implies that, while allocating more resources to the rights that have been accorded priority at any given point in time, care must be taken to ensure that the rest of the rights maintain at least their initial level of real-

ization.

Finally, the priorities and trade-offs must be decided in a genuinely participatory manner, so that interests and values of the weaker segments of the society do not get lost through the pressure of powerful interest groups.

### ***The Human Rights Approach Towards Monitoring of Policy Implementation***

Monitoring and evaluation of performance is a necessary part of any kind of development strategy, whether rights-based or otherwise. But the characteristic feature of the human rights approach is that it emphasises the notion of accountability in a way that traditional approaches do not.

The very notion of rights implies the notion of duties or obligations. But a duty can only be meaningful if the duty-bearer can be held accountable for failing to perform its duty. The need to ensure accountability is, therefore, centrally important for the human rights approach to development.

There must exist mechanisms through which the culpability of the State can be ascertained in case of failure to adopt and implement appropriate policies and so that sanctions can be imposed if it is indeed found culpable. These accountability mechanisms can be of various kinds — judicial, administrative, community-based, and so on. It must be noted that holding the duty-bearers to account does not necessarily imply taking recourse to the court of law. There can be both judicial and non-judicial means of accountability — the latter might involve quasi-judicial (for example, ombudsman, treaty bodies), political (for example, parliamentary process), administrative, and civil society institutions. The human rights approach to development would require the setting up of an appropriate mix of accountability mechanisms. Each State must decide for itself which accountability mechanisms are most appropriate in its particular case, but all mechanisms must be accessible, transparent, and effective. Most importantly, accountability procedures must be participatory in nature so that people are able to hold the State accountable for its actions.

Once these principles are accepted as the foundation of policy-making for all-round development of the society, it should be possible to harness the forces of globalization for advancing the cause of human rights and to guard against any adverse consequences.